

May 27, 2010

Via Electronic Filing

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lawrence E. Strickling
Assistant Secretary for Communications and Information
Herbert C. Hoover Building (HCHB)
U.S. Department of Commerce / NTIA
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

RE: Written Ex Parte Communication, GN Docket Nos. 09-51, 09-157;
WT Docket Nos. 07-157, 04-356

Dear Chairman Genachowski and Assistant Secretary Strickling:

CTIA – The Wireless Association® (“CTIA”) writes to respond to the recent letter and associated stimulus grant request of the County Executives of America (“CEOA”).¹ The CEOA Letter requests that the Commission allocate the 2155-2180 MHz spectrum band (“AWS-3”) for the creation of a free broadband service to be deployed in connection with M2Z Networks, Inc. (“M2Z”). CEOA notes that it has submitted an application for funding under the Broadband Technology Opportunities Program (“BTOP”) that relies on use of the AWS-3 band, and therefore asks the Commission to abandon the recommendations—made less than two months ago in the National Broadband Plan (“NBP” or “Plan”)—to explore pairing the AWS-3 band with Federal spectrum in or around 1.7 GHz and “immediately” make available the AWS-3 band for CEOA’s proposed network. CEOA’s letter and application should be summarily dismissed by the FCC and NTIA as they not only violate the goals recently identified in the NBP but also violate the objectives of the BTOP program.

CEOA’s application and the proposal upon which it is based suffer from several fatal flaws that will be discussed in more detail in this letter, including:

- The NBP specifically recommended that NTIA investigate pairing the AWS-3 spectrum;
- The CEOA application is contrary to the NBP, in that it violates the goals identified in the Plan;

¹ Letter from Mike Griffin, Executive Director, County Executives of America to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 09-51 and 09-157, WT Docket Nos. 07-195 and 04-356, at 1 (May 11, 2010) (“CEOA Letter”).

- CEOA's application would not advance BTOP objectives, as 99.9968 percent of the population in the counties seeking stimulus grants already has wireless 3G service available;
- CEOA's proposal commits only to future speeds that are slow by today's standards; and
- The submission violates the rules and policies governing BTOP as the rules discourage funding applications that do not demonstrate the applicant's ability to secure all required licenses and regulatory approvals.

CTIA strongly opposes CEOA's proposal, as allocation of AWS-3 for this purpose and grant of the application would (1) fail to put the AWS-3 spectrum to its highest and best use, (2) undermine the goals of the NBP, (3) disserve the BTOP grant program goals, and (4) result in unacceptable levels of interference to existing licensees.

The NBP correctly observed that the allocation of additional spectrum for mobile broadband use is critical "to meet growing demand for wireless broadband services, and to ensure that America keeps pace with the global wireless revolution."² Consistent with this objective, the NBP made a very specific recommendation that NTIA, in consultation with the Commission, "should conduct an analysis, to be completed by October 1, 2010, of the possibility of reallocating a portion of the 1755-1850 MHz to pair with the AWS-3 band."³ The NBP recognized that such a pairing "has the potential to bring benefits of a global equipment ecosystem to this band."⁴

CTIA and its members have strongly supported the pairing of AWS-3 spectrum with the federal spectrum in or around 1.7 GHz, as this allocation would further numerous Commission policy objectives. Specifically, the pairing would: make available a significant amount of additional spectrum for mobile broadband use; further harmonize domestic mobile allocations with international spectrum usage; and eliminate the interference threat posed by unpaired use of the AWS-3 band.⁵ Importantly, pairing the AWS-3 band with spectrum in or around 1.7 GHz spectrum also would result in an allocation contiguous to the existing AWS-1 allocation that will allow the spectrum to be rapidly deployed with equipment made available on an expedited basis. CTIA urges the Commission and NTIA to follow the carefully considered approach outlined in the NBP and work collaboratively to identify spectrum for pairing with the AWS-3 band.

CTIA strongly opposes the abandonment of the FCC's broadband initiatives in favor of a single party's self-serving request that would clearly not put the spectrum to its highest and best use. The service proposed by CEOA would take several years to roll out,⁶ with

² Connecting America: The National Broadband Plan at 84 (Mar. 16, 2010) ("*National Broadband Plan*").

³ *Id.* at 86-87.

⁴ *Id.* at 86.

⁵ See Letter from David J. Redl, Director, Regulatory Affairs, CTIA – The Wireless Association® to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket Nos. 09-51 and 09-157, WT Docket Nos. 07-195 and 04-356 at 3-4 (Mar. 4, 2010).

⁶ County Executives of America, Free Wireless Broadband Service Connecting Counties and their Citizens, Application Executive Summary at 2 ("CEOA Executive Summary"), *available at*

speeds that are slow even by today's standards⁷ and coverage that does not extend the availability of broadband. In fact, analysis of 3G coverage data by American Roamer reveals that, in the 12 counties for which the CEOA application seeks broadband stimulus grants, it is estimated that 99.9968 percent of the population already has wireless 3G service available at speeds that are significantly faster than what M2Z and CEOA propose. ***This means that, out of a population of 12.9 million, fewer than 500 people currently do not have wireless 3G coverage. In nine of these counties, not a single person is uncovered by 3G service.***⁸ More broadly, of the 700 counties that comprise CEOA's membership, similar analysis of 3G coverage data by American Roamer reveals that an estimated 98.7 percent of the combined population is covered by 3G service.

The proposed service, while nominally "free," will not be capable of providing consumer-grade broadband services. This is true because the network's speed will pale in comparison to other wireless service (as well as wired) offerings currently available in the geographic areas CEOA proposes to cover, not to mention what will be available by the time the networks would be built. The free service CEOA proposes to offer also fails to meet the NBP's minimum suggested speed for community anchor institutions.⁹

If broadband affordability is a concern for the Commission, it should look to its existing programs and the NBP's suggestions rather than adopt CEOA's self-serving approach. For example, the Commission's Lifeline/Link Up programs could be used to enable lower-income individuals to purchase affordable broadband services utilizing the technology of their choice, an approach endorsed by the NBP.¹⁰ The Commission also is proceeding down a path to provide several hundred megahertz of new spectrum for mobile broadband along with a Mobility Fund that will enable buildout in rural and underserved areas.¹¹ These measures to promote broadband deployment and affordability are plainly preferable to an approach that effectively creates a broadband underclass burdened by slow speeds.

<http://www.ntia.doc.gov/broadbandgrants/applications/summaries/7685.pdf> ("We estimate that of the 13M people, over 1.2M people will adopt the free service within the first five years and over 2.5M people total within 10 years.").

⁷ See *id.* at 1 (stating that under its proposal "[e]veryone will have access to a free, fixed portable wireless broadband service with sustained speeds of 768kbps"). See also Broadband Technology Opportunities Program, Notice of Funds Availability (NOFA) and Solicitation of Applications, Docket No. 0907141137-0024-06, 75 Fed. Reg. 3792, 3797 (rel. Jan. 22, 2010) ("NOFA") (defining "broadband" as two-way data transmission with advertised speeds of at least 768 kbps downstream and at least kbps upstream to end users).

⁸ Derived from an analysis based on marketed coverage compared to 2009 U.S. Census population estimates and American Roamer data.

⁹ *National Broadband Plan* at 10 (establishing the goal that "[e]very American community should have affordable access to at least 1 gigabit per second broadband service to anchor institutions such as schools, hospitals, and government buildings").

¹⁰ *Id.* at 10 ("To promote affordability, this plan also proposes extending the Lifeline and Link-Up programs to support broadband."). See also *id.* at 173 ("To make broadband more affordable, the low-income support program should expand provider eligibility to include any broadband provider selected by the consumer – be it wired or wireless, fixed or mobile, terrestrial or satellite – that meets minimum criteria to be established by the FCC. Doing so will maximize consumer choice and stimulate innovation in serving low-income users.").

¹¹ See *National Broadband Plan* at 84, 146.

Just as importantly, the allocation advocated by CEOA, in addition to contravening the objectives of the NBP, would cause interference to existing mobile broadband licensees and thus ultimately frustrate the Commission's broadband deployment goals. CTIA, and others, have repeatedly demonstrated that a TDD-based mobile broadband service in unpaired AWS-3 spectrum would cause an unacceptable level of harmful interference to adjacent AWS-1 licensees.¹² These findings have been affirmed by various laboratory tests and statistical models that have demonstrated the extremely high potential of harmful interference to FDD AWS-1 devices by AWS-3 transmissions. Test results submitted by T-Mobile show that AWS-1 users with an AWS-3 router operating in their homes would have a nearly 67% probability of call failure.¹³ For its part, M2Z has previously acknowledged that its proposed operation of a mobile broadband network in unpaired AWS-3 spectrum would result in interference to AWS-1 devices.¹⁴

CTIA further submits that CEOA's proposal does not meet the BTOP requirements in any event. CEOA has made its BTOP funding application contingent on: (i) the Commission immediately allocating the AWS-3 band on a stand-alone basis,¹⁵ (ii) retention of "current technical rules" for the band,¹⁶ and (iii) CEOA's ability to obtain the necessary AWS-3 spectrum at auction.¹⁷ As an initial matter, the rules and policies governing BTOP discourage funding applications that do not demonstrate the applicant's ability to secure all required licenses and regulatory approvals.¹⁸ Here, the allocation of the spectrum and the technical rules under which the spectrum would be made available are entirely speculative and, even if the spectrum were auctioned as an unpaired block, there is no guarantee that the auction would result in CEOA gaining access to the spectrum.

As a final matter, CEOA's characterization of the AWS-3 band as "long dormant" and as having "lain fallow for a decade" is simply incorrect.¹⁹ These arguments and, in fact, many of the points raised in the CEOA filing have been made time and again by M2Z. While the spectrum was reallocated to the Emerging Technologies band as a necessary prerequisite to moving the spectrum to a higher and more valued use, the 2155-2180 MHz

¹² See, e.g., Letter from Christopher Guttman-McCabe, CTIA – The Wireless Association, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 04-356, 07-195 (filed June 18, 2008); Letter from Christopher Guttman-McCabe, CTIA – The Wireless Association, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 04-356, 07-195 (filed Oct. 1, 2008); Letter from Christopher Guttman-McCabe, CTIA – The Wireless Association, to Marlene H. Dortch, Federal Communications Commission, WT Docket Nos. 04-356, 07-195 (filed Oct. 14, 2008) ("CTIA Oct. 14 Ex Parte").

¹³ CTIA Oct. 14 Ex Parte at 2 (*citing* Optimi Corporation, "Analysis on the Effects of the AWS-3 to AWS-1 Mobile to Mobile Interference" attached to T-Mobile *Ex Parte* Letter, WT Docket Nos. 04-356 & 07-195, (filed Sept. 30, 2008)).

¹⁴ See Reply Comments of M2Z Networks, WT Docket Nos. 07-195, 04-356 at 17 (filed Aug. 11, 2008).

¹⁵ See CEOA Executive Summary at 2; CEOA Letter at 1-2.

¹⁶ See CEOA Executive Summary at 2.

¹⁷ See *Id.*

¹⁸ NOFA at 3800 ("In evaluating compliance with this factor, NTIA will consider . . . whether the applicant will be able to secure all licenses, franchises, and regulatory approvals required to complete the project.").

¹⁹ CEOA Letter at 1.

band is home to hundreds of incumbent common carrier, public safety and private fixed microwave licensees. While CTIA concurs that the use of AWS-3 should be migrated to mobile services, the implication that the AWS-3 band has served no useful purpose for a decade is flatly incorrect.

For the foregoing reasons, CTIA urges the FCC and NTIA to deny CEOA's attempt to end run the NBP goals and subvert the BTOP process into yet another mechanism for revisiting the same arguments previously advanced by M2Z and rejected by the Commission. CEOA has submitted a patently incomplete and speculative BTOP request that—even if granted—would undermine the NBP by using valuable radio spectrum to create a broadband underclass burdened with slow speeds. The Commission and NTIA should reject this attempt to execute an end run around the NBP goals and summarily reject CEOA's request.

Sincerely,

A handwritten signature in black ink that reads "Steve Largent". The signature is written in a cursive, flowing style with a large initial "S".

Steve Largent